



CHAPTER IV: SHELTER CARE

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A. Introduction

The shelter care hearing is the first court hearing in a child protective act case if the child has been removed from his or her home, if the alleged offender is removed from the home, or if removal has been requested. The shelter care hearing must occur within 48 hours of the removal of the child from the home or within 24 hours of the removal of the offender from the home. This initial hearing may be preceded by a proceeding directing placement of an endorsement on the summons in a child protection act case permitting removal of the child from the home.¹ In emergency cases, a child may have been removed from home without prior court approval,² and the shelter care hearing is the first review of the placement by the court.

The main purpose of the shelter care hearing is to make a decision concerning whether the child can be immediately and safely returned home while the child protection case is pending. This initial decision is often the most important decision to be made in an abuse and neglect case. Although it is made on an emergency basis, the decision must be based upon a competent assessment of risks and dangers to the child.

The shelter care hearing is an emergency matter. The family is often in crisis. Great demands are placed upon IDHW to stabilize the situation and to provide services to permit the child to safely remain at home or return home. The removal of the child, however, should not be viewed as a preventive measure with the notion that the child will

¹ Idaho Code § 16-1606(d).

² Idaho Code §16-1612

return to the family after a full investigation is completed. This perspective ignores the great risk of out-of-home placements, the disruption such placements cause to the child and the family; and the emotional and fiscal costs involved in placing children. It also ignores the reality that safe, in-home caretakers can often be found if adequate investigation is undertaken and services are provided.

To evaluate the likelihood and severity of harm if the child is returned home, the court must take into account not only the facts and circumstances that gave rise to the original removal of the child (in other words, the parents' or guardian's possible abuse or neglect, the homelessness of the child or the lack of stability in the home environment), but also what might be done to safeguard the child in the home. That is, the court should evaluate both the current danger to the child, and what can be done to eliminate the danger. Harmful consequences of removal should also be considered. Removal is always a traumatic experience for a child. Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems.

A primary goal of the court should be to make the shelter care hearing as thorough and meaningful as possible. The court should conduct an in depth inquiry concerning the circumstances of the case. It should hear from all interested persons present. As part of its inquiry, the court should evaluate whether the need for immediate placement of the child could be eliminated by providing additional services or by implementing court orders concerning the conduct of the child's caretaker. If the court determines that the child needs to be placed, the court must evaluate the appropriateness of the placement proposed by the IDHW and seek the least disruptive alternative that can meet the needs of the child. For example, the court should explore whether the needs of the child could be met in the home of a relative.

Whether or not the court decides at the shelter care hearing that a child can safely go home, the court must determine whether the IDHW has made reasonable efforts to preserve the family. Courts should insist that adequate services are delivered to prevent the need for placement, and make certain that decisions to remove children from their homes are made prudently and after full consideration of less disruptive alternatives.

At the same time, the court should ensure that appropriate efforts are being made by IDHW to provide for the needs of the family in a timely manner. The court can order IDHW to obtain any additional reports or diagnostic assessments that may be needed such as psychological evaluations, drug abuse assessments or school records involving the children.

If the child will remain outside the home during the child protective case, it is important to keep in mind that the time in which the shelter care hearing is held is a critical period of crisis for the family. It is the responsibility of the court to make sure that the agency takes immediate steps toward family reunification and tries to maintain the relationship between parent and child.

A secondary purpose of the shelter care hearing is for the court to move the litigation forward as quickly as possible and to oversee the IDHW's initial involvement in the case. Time is of the essence in child abuse or neglect cases. At the shelter care hearing the court should take steps to eliminate potential sources of delay in the litigation.

When shelter care hearings are thorough and timely, some cases can be resolved with no need for subsequent court hearings and reviews. In other cases, a thorough and early shelter care hearing can help simplify and shorten early hearings and can move the case more quickly to the later stages of adjudication, disposition, and review. This not only preserves court resources but reduces the cost and harm of unnecessary, prolonged out-of-home placement of children.

A timely and thorough shelter care hearing can shorten the time of foster care and speed the judicial process. By ensuring speedy notice to all parties, the hearing avoids delays due to difficulties with service of process. By ensuring early, active representation of parties, the hearing avoids trial delays due to scheduling conflicts and the late appointment of unprepared advocates. By clearing the trial (adjudication) date at a very early time, the hearing avoids later scheduling conflicts that otherwise would delay trial dates.

By thoroughly exploring all issues at the shelter care hearing, the court can resolve and dismiss some cases on the spot, move quickly on some pretrial issues (such as discovery or court-ordered examination of parties), encourage early settlement of the case, encourage prompt delivery of appropriate services to the family, and monitor agency casework at a critical stage of the case. Another purpose of the shelter care hearing is for the court to begin setting a problem-solving atmosphere so the child can remain safely at home or be safely returned home as quickly as possible.

Parents are often angry and emotionally distraught at this hearing. The emergency removal of the child may have occurred because the relationship between the social worker and parents has broken down. The adversarial nature of court proceedings can aggravate tensions between the parties. The court should take active steps to defuse hostilities, to gain the cooperation of the parties, and to assist parties in attacking the problem rather than each other.

Although the court should not assume the role of caseworker, there are practical steps that a court can take to gain the

Due to the constraints of time, in some cases it might not be possible for the court to conduct a careful and complete initial shelter care hearing. In these circumstances, the court should:

- ◆ Decide all issues that can be immediately resolved at the current shelter care hearing;
- ◆ Provide specific guidance as to the persons who must be present and the issues to be decided at the subsequent shelter care hearing; and
- ◆ Continue the shelter care hearing for not more than 24 hours.

cooperation of the parties and develop a problem-solving atmosphere. The court should remember that for many parents the shelter care hearing will be their first experience in court. The court can explain the hearing process to parents so they are less confused. The

court can explain that it is not an arm of the agency, but that its role is to be an impartial decision-maker, acting upon information provided by all parties. The court can carefully listen and seek to thoroughly understand the perceptions and concerns of all parties present at the hearing. The court can insist that proper decorum is maintained by each party so that all persons present are treated with dignity and respect. The court can attempt to identify areas of agreement and mediate areas of dispute between parties so that some disputes are resolved through agreement rather than through contested hearings.

At the conclusion of the shelter care hearing, the parties should leave with a decision from the court concerning the placement of the child that is based on thorough understanding and careful consideration of the circumstances of the case. The parties should see that the court has taken an active role to move the case forward and to make certain that the agency responds to the needs of the family and child in a timely manner. The parties should leave the hearing with the perception that they were treated fairly by a court that is concerned about their interests and that is striving to build a working relationship between the parties so that the need for court intervention can be ended as quickly as possible.

A complete shelter care hearing requires a substantial initial investment of time and resources. Such an investment results in better decisions for children and their families, and preserves the resources of the court and child welfare system. Significant costs are incurred when a child is unnecessarily placed outside of the home. A child can suffer serious emotional and behavioral problems from the disruption and upheaval caused by placement. The parents' feelings of inadequacy and helplessness may be intensified, thereby making efforts to change their behavior even more difficult. The family may lose its income and housing, if the family has been dependent on public assistance. As a result of these and other effects of removing a child, extra efforts must often be made and significant costs incurred to resolve problems as early as possible in each case.

By insisting that adequate services are delivered to safely prevent the need for placement and by making certain that decisions to remove children from their homes are made with great care, courts can avoid costs associated with unnecessary placements. By investing the time to carefully review agency efforts and to suggest or order additional or more appropriate services, the court may find that its own time and resources are saved when cases are resolved in a more timely manner.

B. Who Should Be Present

1. Magistrate Judge

A magistrate judge presides over the shelter care hearing and is responsible for making the required decisions. Whenever possible, the judge should regularly preside over child abuse or neglect cases and be familiar with the workings of the entire child welfare system, and who has broad knowledge of and experience with the services and placement options available in the community.

2. Parents whose rights have not been terminated, including putative fathers

It is critical that all parents involved in the life of the child be made a part of the court case as soon as possible.³ “Parent” includes a biological parent whose rights have not been terminated, as well as a parent who has adopted a child, and who has the same parental rights as a biological parent. Non-custodial parents and involved putative fathers should be present because, if the child cannot be returned to the custodial parent immediately, it might be possible to place the child with the other parent rather than in state care. Putative fathers who have not previously been involved in the child's life should also be brought into the court process as quickly as possible. Timely resolution of paternity issues is both in the best interests of the child, and essential to further case processing.

3. Relatives with legal standing or other custodial adults

When parents do not have custody, other custodians or guardians must, by law, be given notice and the opportunity to participate in shelter care hearings. In many child neglect cases, parents have left children in the homes of relatives or friends who have become full time caretakers but without legal custody. Full-time caretakers without legal custody but functioning as parents (in loco parentis) also should be present at the shelter care hearing. Their presence is needed both because the best decision may be to leave the child in their homes prior to trial and because they often have vital information about the child and family. Unfortunately, because shelter care hearings are set on short time frames, it is difficult to notify parents through service of process. The social worker from IDHW is often in the best position to notify parents of a shelter care hearing and should be expected to do so. The court can monitor IDHW efforts to notify parents by inquiring at the hearing as to what efforts were made to notify the parents and by setting additional hearings within a few days if a parent fails to appear. The prospect of an additional court appearance can motivate IDHW or the prosecutor's office to secure the attendance of parents at the shelter care hearing.

Persons who should always be present at the shelter care hearing:

- ◆ Judge
- ◆ Parents whose rights have not been terminated, including putative fathers
- ◆ Relatives with legal standing or other custodial adults
- ◆ Indian custodian, the child's tribe and attorney, if applicable
- ◆ Assigned caseworker
- ◆ County prosecutor or deputy attorney general
- ◆ Attorney for parents (separate attorneys if conflict warrants)
- ◆ *Guardian ad litem*, attorney for the GAL and/or attorney for the child
- ◆ Court reporter or suitable technology
- ◆ Security personnel
- ◆ Interpreters, if applicable

4. Assigned caseworker

To provide the court with complete, accurate, and up-to-date information for the hearing, the caseworker with primary responsibility for the case must be present. When this is not possible, the worker's supervisor, who has been well briefed on the case, should be present.

³ Idaho law *requires* notice to each parent and guardian. Idaho Code § 16-1606(a).

5. Indian Custodian/Child's Tribe and Tribal Attorney

An Indian child's tribe has the right to notice and an opportunity to participate in all hearings involving the child.⁴ For Indian children, the tribe often has information regarding the child and family that is crucial to the court in making a good determination regarding the child.

6. County Prosecutor or Deputy Attorney General

The shelter care hearing is a critical event. This stage of the proceedings may have a powerful impact on the child and family, and on the long-term outcome of the case. All parties should be represented by counsel at the shelter care hearing. In child protection cases in Idaho, the state is represented by the county prosecutor or a deputy attorney general.⁵ Further, the court should expect counsel to have prepared for the hearing in advance. This requires, at a minimum, that the attorney has interviewed witnesses and conferred with both the worker and counsel for other parties as much in advance of the hearing as possible.

7. Attorney for parents (separate attorneys if conflict warrants)

Because of the critical strategic importance of the shelter care hearing, it is essential that parents have meaningful legal representation at the hearing. To ensure that the necessary persons are present and prepared to proceed at the shelter care hearing, the court must make arrangements for the necessary appointments prior to the shelter care hearing whenever possible.

Most parents involved in these proceedings cannot afford counsel. Idaho law requires that the notice to the parents inform them of their right to counsel. The notice must also instruct the parents to contact the court at least two days prior to the hearing to require court-appointed counsel.⁶ Given the short time frames for shelter care hearings, this is usually not possible.

The recommended best practice is to appoint counsel for the parents at the time the petition is filed. At the shelter care hearing, if the court determines that the parents are not in fact indigent, the court can withdraw the appointment at the conclusion of the shelter care hearing. Or, if the parents appear with counsel of their own choice, the appointment can be withdrawn at the beginning of the shelter care hearing. This ensures competent representation for the parents at the shelter care hearing, while avoiding routine delays of shelter care hearings for appointment of counsel.

Conflicts between the parents may warrant the appointment of separate counsel for the parents. In some cases, the conflict will be apparent from the pleadings, and separate counsel can be appointed from the outset.

⁴ 25 U.S.C. 1912(a), 1911(c)

⁵ See Idaho Code § 16-1605.

⁶ Idaho Code § 16-1606(c); IJR 36

8. Guardian *ad litem*, Attorney for GAL and/or Child's Attorney

Federal law strongly suggests children should have individual legal representation in child abuse and neglect cases, and this should apply at the critical shelter care hearing.⁷ Idaho law requires the appointment of a guardian *ad litem* for the child, to serve at *each stage* of the proceeding, and provides that the court may appoint counsel for the guardian *ad litem*. Idaho further provides that the court may appoint separate counsel for the child, and *must* appoint separate counsel for the child in cases where no guardian is available for appointment.⁸

In Idaho, the organization that provides guardians *ad litem* for child protection cases is CASA. Most counties have a local CASA organization. Some local CASA organizations rely on volunteer attorneys to provide representation to the guardian *ad litem*; most CASA offices rely on court-appointed counsel. In some counties, the public defender is appointed to represent the guardian *ad litem*; in others, the court maintains a list of private counsel who are available for appointment in child protection cases and who can be available for shelter care hearings on short notice. To ensure that the child's interests are fully represented, and that information concerning the child's interests is properly presented to the court, it is essential that the guardian *ad litem* be represented by qualified counsel

The recommended best practice is for the court to appoint the guardian *ad litem* for the child and the attorney for the guardian *ad litem* (or if no guardian *ad litem* is available, an attorney for the child) on the filing of the petition. To ensure that the necessary persons are present and prepared to proceed at the shelter care hearing, it is essential that the court make arrangements for the necessary appointments prior to the shelter care hearing.

9. Court reporter or suitable technology

A court reporter or stenographer should be present to accurately record all proceedings at each shelter care hearing. If electronic technology is substituted for a court reporter, the recording equipment must be of appropriately high quality to allow the efficient, cost-effective, and timely production of a hearing transcript, when needed.

10. Security personnel

Security personnel should be available during all child abuse and neglect hearings. In all courts, security personnel must be immediately available to the court whenever needed. In some parts of the United States, security concerns may be serious enough to require guards or bailiffs to be present during all hearings.

11. Interpreters, if applicable

If a parent or other essential participant is not fluent in English, a qualified interpreter must be present. If there is more than one essential participant who needs an interpreter, more than one interpreter may be required. For example, if two parents are represented

⁷ The availability of federal grant funding under the Child Abuse Prevention and Treatment/Adoption Reform Act will be based in part on whether states appoint counsel for children in child abuse actions. 42 U.S.C. §5106a.

⁸ Idaho Code § 16-1618(1).

by one attorney then one interpreter may serve for both parents, but if parents are represented by different attorneys, then one interpreter will be needed for each parent. If one or more non-English speaking witnesses will be called to testify, then another interpreter will be needed for the witnesses.

C. Persons whose presence may also be needed at the shelter care hearing

In addition to persons who always should be present at shelter care hearings, there are others whose presence may also be needed, depending upon the facts and circumstances of the case:

1. Age-appropriate children

Children often should be present at the shelter care hearing, but their attendance can depend upon many factors including the

Persons whose presence may also be needed at the shelter care hearing:

- ◆ Age-appropriate children
- ◆ Extended family members
- ◆ Adoptive parents
- ◆ Judicial case management staff
- ◆ Law enforcement officers
- ◆ Service providers

age of the child, the physical and emotional condition of the child, and degree that requiring the child to be present might traumatize the child. As an alternative to bringing the child to a hearing, the IDHW may choose to present the child's hearsay statements and then allow the child's guardian *ad*

litem to have access to the child at an off-site location or by telephone.⁹ In all cases, the child should be accessible in the event that the court determines that the child's presence is necessary.

2. Extended family members

When relatives either are already actively involved with a child or are interested in caring for a child, their presence can be valuable at a shelter care hearing. Relatives can provide essential information about the situation that can help protect the child in the home (thus allowing the court to return the child home), and can become the immediate caretaker of the child, if necessary. It is helpful for the court to observe the child's relatives and be able to speak to them directly at the hearing.

3. Adoptive parents

Adoptive parents must, by law, have the same rights in the legal process as biological parents.

4. Judicial case management staff

It is possible for courts to function efficiently with no judicial staff other than the judge in the courtroom. However, administrative staff who are present in the courtroom can help the judge by greeting the parties, handing out papers, operating tape recording equipment (where applicable), preparing and checking court orders, and completing errands and tasks necessary to help the judge complete the hearing.

⁹ The case worker's testimony as to the child's statements would be hearsay but such hearsay is admissible at shelter care hearings. IRE 101(e)(6) provides that the rules of evidence, which include the hearsay rules, do not apply at shelter care hearings.

5. Law enforcement officers

Law enforcement officers who remove children from dangerous situations are often key witnesses. They sometimes need to be present to testify when parents demand the child's immediate return home.

6. Service providers

When a family has already been intensively involved with a service provider such as a public health official, homemaker, or mental health professional, that professional may provide essential information at the shelter care hearing. The professional may, for example, assist the court to identify a means of leaving the child safely at home.

7. Adult or juvenile probation or parole officer

Family members may either presently or recently have been involved with juvenile or adult probation or parole services. Department officers with past or current knowledge pertinent to the family's circumstances can often provide the court with valuable testimony. Both juvenile and adult probation and parole departments should be contacted and potential witnesses identified and asked to appear at the shelter care hearing.

8. Other witnesses

Critical decisions affecting the lives of children are made at shelter care hearings. Allowing the child to remain or return home may in some cases endanger the child, but removal is traumatic and in some cases may be unnecessary. To ensure careful and informed judicial decisions, the court must make it possible for witnesses to testify at the shelter care hearing. Eyewitnesses to the neglect or abuse of the child, police officers who have investigated the case, service providers who have been involved with the family, and medical providers who have examined the child can all provide valuable testimony at the shelter care hearing.

Each party is responsible for securing the attendance of its own witnesses, but the greatest burden is on IDHW and counsel representing the state, because the burden of proof is on the state. Securing attendance of witnesses may be difficult, because the witnesses might not be available on the short time frames required by shelter care hearings, and subpoenas often cannot be delivered in time for the hearing. IDHW and counsel for the state may not know to what degree the hearing will be contested and

therefore may not know which witnesses will actually be needed.

Courts can make sure that parties and key witnesses are present by:

- ◆ Requiring quick and diligent notification efforts by the agency;
- ◆ Requiring both oral and written notification in language understandable to each party and witness;
- ◆ Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- ◆ Requiring caseworkers to encourage attendance of parents and other parties.

If a witness is unavailable to testify in court, arrangements can be made for the witness to testify by telephone. Or, well-prepared written reports, such as medical or police reports, can be made

available prior to the hearing. This is a less desirable option, because the preparer of the report is not available for questioning, but the less stringent rules applicable to shelter care hearings make this an option.¹⁰ Finally, the court may adjourn the hearing for brief periods, allowing the currently available witnesses to testify at the originally scheduled shelter care hearing, and setting a continued hearing for the next available time the remaining witness(es) can be present. Continuances must be kept as short as possible, and calendars rearranged as necessary, to enable the court to make its decision as soon as possible.

To make sure that parents, custodians, and other witnesses are present during shelter care hearings, special efforts are required. Understandable explanations of what has happened must be handed to parents, custodians, or caretakers when children are first removed. A written notification in understandable language must state the reason for removal, the time and place of the hearing, the name and number of a person to call to obtain court-appointed counsel, and the need for immediate action.

For parents, custodians, and other caretakers who are not present when children are taken, IDHW must make diligent efforts to provide them with this information. At the hearing, the IDHW caseworker must explain what has been done to notify the parties. Finally, court staff must be available to take calls from parents and to arrange for the appointment of counsel.¹¹

Perhaps the most important factor in influencing whether parents and others will actually appear at the shelter care hearing is the attitude of the assigned caseworker. The judge should require caseworkers and counsel for the state to exert their best efforts to have parents and other necessary witnesses attend the shelter care hearing. In some cases, this may even involve arranging appropriate transportation for parties.

D. Key Decisions the Court Should Make at the Shelter Care Hearing

Idaho Code § 16-1614 lists the specific finding the court is required to make at the shelter care hearing, including fundamentally important decisions about placement of the child. In addition, the shelter care hearing provides the court with an opportunity to take steps to move the litigation forward; to oversee the agency's initial involvement with the case; and to emphasize specific problem-solving so that the child can safely remain home or be returned home as quickly as possible.

The following is a discussion of specific key decisions, including statutorily required findings, to be made by the court at the shelter care hearing:

1. Has a CPA Petition been filed?

Idaho law requires that a petition be filed prior to the shelter care hearing.¹²

¹⁰ IRE 101(e)(6) provides that the rules of evidence, which include the rules regarding hearsay, do not apply at shelter care hearings.

¹¹ Idaho law requires service of notice that includes key information for the parents or other guardians. See Idaho Code § 16-1606 and IJR 32-36. There is more information about service of process in Chapter III.

¹² Idaho Code § 16-1614(e)(1)

2. Is There Reasonable Cause to Believe that the Child is Within the Jurisdiction of the Child Protection Act?

A child is within the jurisdiction of the Child Protection Act if the child is abused, abandoned, neglected, homeless, or lacks a stable home environment. Another child residing in or having custodial visitation in the same home may also come within the jurisdiction of the act if certain conditions are met.¹³ The court cannot exercise its authority under the CPA to remove the child (or the alleged offender) from the home unless the court makes this preliminary finding that there is reasonable cause.¹⁴ If the court finds that reasonable cause does not exist, the court is not required to dismiss the petition. The state can still proceed to phase one of the adjudicatory hearing to prove its petition, but the child cannot be removed from the home pending the adjudicatory hearing.

Key Decisions to be Made at the Shelter Care Hearing

- ◆ Has a CPA Petition been filed
- ◆ Is There Reasonable Cause to Believe that the Child is Within the Jurisdiction of the Child Protection Act?
- ◆ Should the child be returned home immediately or kept in foster care prior to trial?
- ◆ If the child is removed from the home, is removal in the child's best interests?
- ◆ Can the child be placed in the sole custody of a parent having joint legal or physical custody?
- ◆ Are services available that will allow the child to remain safely at home, and will parents commit to participate in the services?
- ◆ Has IDHW made reasonable efforts to avoid protective placement of the child
- ◆ Are responsible relatives or other responsible adults available?
- ◆ Is the placement proposed by IDHW the least disruptive and most family-like setting that meets the needs of the child?
- ◆ Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- ◆ Are orders needed for examinations, evaluations, or immediate services?
- ◆ What are the terms and conditions for parental visitation?
- ◆ What consideration has been given to financial support of the child?

3. Should the child be returned home immediately or kept in foster care prior to trial?

As explained above, the key decision that the court makes at shelter care hearing is whether to return a child home immediately. The child's removal from home triggers the shelter care hearing, and the hearing is held to decide whether the child needs to stay outside the home. In deciding whether to return the child home, the court must evaluate the danger to the child by hearing allegations of abuse or neglect. In addition, the court must examine whether there are any possible means of protecting the child without placing the child in foster care.

4. If the child is removed from the home, is removal in the child's best interests?

As part of the shelter care order, Idaho law requires the court to determine that it is contrary to the welfare of the child to remain in the home, and that it is in the best interest of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing.¹⁵

¹³ Idaho Code § 16-1603.

¹⁴ Idaho Code § 16-1614(e)(2).

¹⁵ Idaho Code § 16-1614(e)(4)(5)

In addition if the shelter care order is the *first court order* sanctioning removal of the child from the home, federal law requires that the court make a *case-specific* finding it is contrary to the welfare of the child to remain or be returned home and that it is in the child's best interest to remain in custody. This finding must be *documented* in the court order.¹⁶ If this finding is not made, the child will not be eligible for federal IV-E funds, and the omission cannot be corrected at a later date to make the child eligible. The finding cannot be a mere recitation of the language of the statute, but it can incorporate by reference an affidavit that describes the specific circumstances making removal in the child's best interest. If the court makes the case-specific finding, but fails to document the finding in the order, the omission can be corrected with a transcript of the hearing that documents the case specific finding. (If the child was taken into custody pursuant to an endorsement on summons, then the endorsement is the first sanctioning removal and the documented, case-specific best interest finding must be made in that order and is not required at the shelter care hearing.)¹⁷

★★★The finding that remaining in the home is contrary to the child's welfare and that removal from the home is in the child's best interests is **required to preserve the child's IV-E funding.**

5. Can the child be placed in the sole custody of a parent having joint legal or physical custody?

Under Idaho law, the court must determine whether the child can be placed in the temporary sole custody of a parent having joint legal or physical custody.¹⁸ In some cases there is reason to believe that the child has been abuse or neglected in one parent's home, but there is another parent with joint physical or legal custody who could provide a safe home for the child pending further proceedings. State law in effect establishes a presumption that placement in shelter care is not in the child's best interest if the child can be safely placed with another parent having joint custody of the child.

6. Are services available that will allow the child to remain safely at home, and will parents commit to participate in the services?

To decide whether there are available means to allow a child to be maintained safely at home, the court must be made aware of services available in the community. In neglect cases, for example, emergency homemakers, day care, or in-home baby-sitters can often eliminate immediate danger to the child. In a wide variety of cases, intensive home-based services in which professionals spend long periods of time in the home sharply reduce danger to the child. The court can order specific, in-home services to ensure the child's safety while remaining with or returning to the family. Whether those services are sufficient to eliminate the immediate danger to the child will depend, in part, on the parent's commitment to participate in those services

¹⁶ 45 C.F.R. § 1356.21(c)(d)

¹⁷ See Chapter III regarding endorsement on summons.

¹⁸ Idaho Code § 16-1614(e)(3)

7. Has IDHW made reasonable efforts to avoid protective placement of the child?

Both state and federal law require the court to determine whether IDHW made reasonable efforts to prevent placement of the child in shelter care. There are, however, substantial differences in the state and federal requirements.

Under Idaho law, the court may order a child placed in shelter care at the shelter care hearing if the court finds, among other things, that 1) reasonable efforts were made to prevent the placement of the child in shelter care but were not successful, OR 2) reasonable efforts could not be provided because of immediate danger to the child.¹⁹

Federal law requires a finding by the court that the agency made reasonable efforts to prevent the child's removal from the home. This finding must be made within 60 days after the child is removed from the home. If this finding is not made within 60 days after removal (or is not made in the manner required by federal law) the child will lose eligibility for federal funds, and the omission cannot be corrected at a later date to reinstate the child's eligibility.

To ensure compliance with the federal requirement, the recommended best practice is to make the finding at the shelter care hearing. The finding could also be made at the adjudicatory hearing, but only if the adjudicatory hearing occurs within 60 days after the child is removed from the home.

Federal law requires that the finding be case-specific and documented in the court's order.²⁰ The finding cannot be a mere recitation of the language of the statute, but it can incorporate by reference an affidavit that describes the reasonable efforts that were made and the circumstances which made further efforts unreasonable. If the court makes a case-specific finding on the record at the hearing, but fails to document it in the court's order, the omission can be correcting with a transcript of the hearing. (Preparation of transcripts is, however, very expensive.)

★★★The finding that that IDHW has made reasonable efforts to avoid removal of the child from the home is **required to preserve the child's IV-E funding.**

The only exception to the federal requirement for a reasonable efforts finding is where the court finds that the parent subjected the child to aggravated circumstances. The exception recognized by state law – immediate danger to the child – is not recognized by federal law. *THEREFORE, the court should not find that reasonable efforts were not made or were not required due to immediate danger to the child. Such a finding would not comply with federal law, and the child would lose eligibility for federal funding.*

The big question is how can the federal requirements be met when reasonable efforts to prevent removal could not be made due to immediate danger to the child. The Idaho Supreme Court Committee to Delays for Children in Foster Care has asked representatives from the U.S. Department of Health and Human Services for an answer to

¹⁹ Idaho Code §16-1614(e)(2).

²⁰ 42 U.S.C. §§ 672(a)(1) and 671(a)(15); 45 C.F.R. 1356.21(b)(1).

this question. To date, the response has been the court should make a reasonable efforts finding phrased in the affirmative. For example: “IDHW efforts were reasonable in that no further efforts to prevent removal could be made because the child was in immediate danger due to the following circumstances “ or “IDHW efforts were reasonable in that no further efforts to prevent removal could be made because the child was in immediate danger due to the circumstances set forth in the Affidavit of _____, dated _____, which is incorporated herein by reference.”²¹

What constitutes reasonable efforts depends on the time available in which such efforts could be made.²² In many cases, IDHW’s first contact with the family occurs as part of the incident giving rise to the petition. In other cases, the agency has had prior contact with the family. By taking a careful look at the agency’s prior efforts, the court can better evaluate both the danger to the child and the ability of the family to respond to help.

8. Are responsible relatives or other responsible adults available?

At the shelter care hearing, the court needs to take into account what help may be obtained from appropriate relatives or other responsible adults involved with the child. Immediate placement with relatives or another responsible adult is possible if either is willing to care for the child and the agency has already been able to favorably evaluate them. Even if relatives or other responsible adults are not available to assume full time care of a child, they may be available as a resource to supervise visitation when necessary. Sometimes, the agency will not have had time to assess relatives or other responsible adults involved with the child prior to the shelter care hearing. If it is too early to evaluate relatives or other adults, but placement of the child with them is a possibility, the court needs to set a schedule for prompt agency evaluation.

9. Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?

If the child must be removed from home and cannot be placed with relatives or a responsible adult, the court should evaluate the placement proposed by the agency to determine whether it is the most appropriate and least disruptive placement. For example, children should not routinely be placed in-group home shelters when they are capable of functioning in the family-like setting of a foster home. If the most appropriate setting for the child is not immediately available on an emergency basis, the court should make certain that appropriate referrals are made so that the child can be moved to a preferred placement when one becomes available.²³

²¹ These suggestions were made in an email from ??? to ??? dated ???. A copy of the email is available from the editor -- ebrandt@uidaho.edu.

²² For a general discussion of reasonable efforts findings, see National Council of Juvenile and Family Court Judges, *et al.*, *Making Reasonable Efforts: Steps for Keeping Families Together* (New York: The Edna McConnell Clark Foundation, 1981); D. Ratterman, *et al.*, *Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation* (Washington: American Bar Association, 1987).

²³ Idaho Code § 1612(k) requires IDHW to make a reasonable effort to place the child in the least disruptive environment to the child, and allows the agency consider placement of the child with related persons. When a child is placed in the custody of the agency, Idaho Code § 16-1623(h) vests authority in the agency to determine the child’s placement, subject to review by the court. For further discussion of the

10. Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?

In child abuse cases where a child is alleged to have been physically or sexually abused by only one parent, it may be that the child can be safely returned to the non-abusing parent. In order to ensure that the child will be protected, it may be necessary to issue protective orders concerning the child. These may include, for example, orders expelling the allegedly abusive parent from the home or restraining the allegedly abusive parent from contacting or visiting the child.²⁴

11. Are orders needed for examinations, evaluations, or immediate services?

During many shelter care hearings, the court should order an examination or evaluation by an expert. For example, the court may need to authorize a prompt physical or mental examination of the child to assess the child's need for immediate treatment. An expert evaluation of a child is frequently essential for placement planning if the child needs to be placed outside of the home. An evaluation can often identify special treatment needs of the child; for example, whether the child will need placement in a residential treatment facility or therapeutic foster home.

Further examination of the child may be needed to preserve evidence bearing on whether the child has been abused. The need for such examinations and evaluations is often already clear at the shelter care hearing, and ordering them at that time can speed the pace of litigation. Sometimes an expert evaluation is needed to determine the fitness of a parent or relative to provide immediate care for the child. If the evaluation is positive it can curtail the child's separation trauma by allowing the child's early return from foster care. On the other hand, if the evaluation is negative, its early submission will speed the pace of litigation and shorten the child's stay in foster care. A judge may also recommend an examination, hold an additional hearing and subpoena witnesses if the evaluation does not take place as recommended, and may withhold a positive determination of reasonable efforts if evaluations are not promptly completed.

12. What are the terms and conditions for parental visitation?

If a child cannot be returned home after the shelter care hearing, immediate parent-child visitation often can ease the trauma of separation. Early visitation helps to maintain parental involvement and speed progress on the case.²⁵ Judicial oversight of visitation helps to ensure that visitation is begun promptly, that it is permitted frequently, and that unnecessary supervision and restrictions are not imposed. The court should make an initial decision concerning the frequency, duration and terms of visitation for the parents, such as whether visitation should be supervised or unsupervised. The court should also

relative authority of the agency and the court concerning placement of a child in IDHW custody, see Chapter VI: Permanency Planning, subheading B.5.

²⁴ Idaho Code § 16-1614(e)(6) authorizes entry of protection orders following the shelter care hearing.

²⁵ On the necessity for liberal parent-child visitation for children in foster care, see K. Blumenthal and A. Weinberg, eds., *Establishing Parent Involvement in Foster Care Agencies* (New York: Child Welfare League of America, 1984); Blumenthal and Weinberg, "Issues Concerning Parental Visiting of Children in Foster Care," in *Foster Children in the Courts*, 372-398 (Boston: Butterworth Legal Publishers, 1983).

decide whether there is a need for any additional orders concerning the conduct of the parents or agency efforts to provide services to the parents or child.

13. What consideration has been given to financial support of the child?

All potential sources of financial support for the child should be identified and considered in court decisions affecting the child. This includes financial support for health services, special educational or developmental needs, and basic child support. Paternity issues which remain unresolved at the time of the shelter care hearing remain a judicial priority at all subsequent proceedings.

Additional Activities at the Shelter Care Hearing

- ◆ Reviewing notice to missing parties and relatives;
- ◆ Serving the parties with a copy of the petition;
- ◆ Advising parties of their rights;
- ◆ Accepting admissions to allegations of abuse or neglect.

E. Additional Activities at the Shelter Care Hearing

There are a number of other functions that the court should perform at shelter care hearing, in addition to the preceding key decisions:

1. Reviewing notice to missing parties and relatives

One of the most important functions of the court during the shelter care hearing is to oversee the agency's early efforts to locate and notify missing parties and relatives. During the shelter care hearing, the court should inquire about parties who are not present and should require an explanation of agency efforts to locate and notify them of the proceeding. Speedy decision-making is critical in child abuse or neglect cases, and timely notice to the parties helps prevent delays.

It is particularly important that efforts to identify and locate and absent parent be initiated as early as possible in the process, even if the parent has not previously been involved in the child's life. Identification of a parent may include paternity testing of putative fathers. Paternity testing should be ordered as early as possible in the proceedings, to minimize delays while awaiting test results.

It is also very important that efforts be made as early as possible to determine if the child is an Indian child. The Indian Child Welfare Act establishes special procedural and substantive safeguards to protect the interests of Indian children and families.²⁶ It applies to any child who is a member of an Indian Tribe, or who is eligible for membership in an Indian Tribe. If the child is an Indian child, the child's Indian Tribe has the right to notice and an opportunity to participate in all hearings regarding the child. ICWA also establishes preferences for placement of Indian Children.

2. Serving the parties with a copy of the petition

The petition and summons must be prepared in advance of the shelter care hearing. The hearing provides an excellent opportunity to efficiently complete service of process.

²⁶ 25 U.S.C. § 1901, *et seq.*

3. Advising parties of their rights

If a party is not represented by counsel at the shelter care hearing, the court should advise the party of the right to counsel, including the right to court appointed counsel, where applicable. Even when the parties are represented at the hearing, the court should explain the nature of the hearing and the proceedings that will follow.

4. Agreements by the Parties

When counsel has been provided in advance of the shelter care hearing, parties are sometimes willing and able to enter into stipulations at the shelter care hearing. Reviewing and accepting the stipulation at that point advances the pace of the litigation and simplifies the work of all participants.

In many cases, the parties will stipulate to temporary shelter care pending the adjudicatory hearing. The court should ensure that the agreement has been thoroughly considered by all participants, especially the parents and the guardian *ad litem*. The court should ensure that the agreement addresses all of the key decisions the court needs to address at the shelter care hearing, and resolve any items that are omitted. If the stipulation includes placement of the child with a family member, the court should specifically inquire as to the agency's investigation of the family member as a care provider for the child. The court should also inquire of the family member's commitment to providing care for the child until the proceedings are resolved, and to placing the child's needs ahead of what the parents' might want. (The purpose of this inquiry is to try to prevent a child being shuffled from relative to relative while the case is pending, or the child being placed with a family member who is more interested in protecting the parent from governmental intervention than in protecting the child.) As to services to be provided to enable the child to safely return or remain home, the court should specifically ask the parents, on the record, whether they are willing and able to comply, and whether there are any services they need or want that will enable them to address the issues that need to be resolved. If the child is to be placed in the custody of IDHW, and the shelter care order is the first order sanctioning removal of the child, the stipulation must include facts to support a case-specific finding that removal is in the child's best interest.

In some cases, the parties will enter into a stipulation at the shelter care hearing that the child is within the jurisdiction of the CPA and the child should be placed either in the custody of IDHW or in the child's own home under the protective supervision of IDHW. In other words, the parties will enter into a stipulation at the shelter care hearing that addresses the two primary issues to be decided at the adjudicatory hearing. In such cases, the court must ensure that the stipulation addresses all the key decisions the court must or should make at the adjudicatory hearing, and resolve any issues not addressed by the stipulation. The next chapter includes a discussion of the key decisions to be made by the court at the adjudicatory hearing.

In some cases, the parties will enter into a stipulation to dismiss. In such cases, the court should inquire as to the basis for the stipulation, and as to whether there has been adequate investigation of the allegations of abuse or neglect. If the parties are in agreement that no abuse or neglect has occurred, or that the issues are sufficiently minor

that they can be addressed informally, then dismissal may be appropriate. If the proposed dismissal is due to lack of adequate investigation, the court can retain the matter pending further investigation.

5. The time and date for the next hearing, and any orders needed to prepare for the next hearing.

In most cases, the next hearing will be the adjudicatory hearing. Idaho law requires that the adjudicatory hearing be held within 30 days after the filing of the petition. Idaho law further requires that a pretrial conference be held three to five days prior to the adjudicatory hearing, and provides for both IDHW and the guardian ad litem to file written reports prior to the adjudicatory hearing.²⁷ Federal law requires the court to make a documented, case-specific finding as to whether the agency made reasonable efforts to prevent the need for placement of the child in foster care, and requires that this finding be made within 60 days from the date the child was removed from the home. If this finding is not made within the deadline, the child may lose eligibility for federal funds. This omission cannot be corrected at a later date to reinstate the child's eligibility for funding.²⁸ It is therefore essential that this finding be made at the adjudicatory hearing, and that the adjudicatory hearing be held within the state and federal time standards.

As noted above, the parties may enter into a stipulation at the shelter care hearing that the child comes within the jurisdiction of the CPA and that the child should be placed either in the custody of IDHW or in the child's own home under the protective supervision of IDHW. In other words, the parties may reach an agreement at the shelter care hearing that addresses the issues to be determined at the adjudicatory hearing. In such cases, the next hearing will be the case planning hearing. Idaho law requires that a written case plan be filed with the court no later than 60 days from the date the child was removed from the home or 30 days from the date of the adjudicatory hearing, whichever is first. Idaho law further provides that the case planning hearing must be held within 5 days after the plan is filed.

The court should set the time and date of the pretrial conference and adjudicatory hearing on the record prior to the conclusion of the shelter care hearing, and order the filing of IDHW and GAL reports prior to the pretrial conference. (If the next hearing will be the case plan hearing, the court should set the time and date for the hearing, order the filing of the case plan, and set the deadline for filing of the case plan.) Because there are so many participants in child protection cases, and so many proceedings with strict deadlines, scheduling can be extremely difficult. These difficulties can be minimized by scheduling the next hearing on the record when all the participants are present with their calendars available. Also, if a party fails to appear, scheduling the next proceeding on the record forecloses any potential excuse that the party did not have notice or did not know of the date and time for the hearing. Finally, if the parties are ordered to appear, sanctions and warrants become available as a means to address a party's failure to appear.

²⁷Idaho Code §§16-1608(a)(b), 16-1609, 16-1631(b)

²⁸42 U.S.C. §671(a)(15); 45 C.F.R. §1356.21(b)(1)

Sometimes, an essential participant is in state or local custody. A parent may be in the jail or prison; a child may be in detention or the custody of juvenile corrections. The court should address whether transport orders will be needed to ensure the presence of all essential participants at the next hearing. If an essential participant is in custody in another state, it may be necessary to make arrangements for that person to appear by telephone.

6. Mediation or other means of alternative dispute resolution

Many courts are beginning to use mediation or other forms of alternative dispute resolution in child protection cases, and obtaining successful results. Mediation can help to promote a more cooperative, problem-solving approach among the participants in the case, identify options for resolution of the case that have the active commitment of all participants, and achieve a safe reunification of the family, or the best possible alternative permanent placement for the child. The Idaho Supreme Court maintains a list of qualified mediators, including those who primarily handle cases involving child custody. The potential for mediation is one of the issues that should be addressed at the shelter care hearing.

F. Submission of Reports to the Court

Given the short time from removal of the child to the time of the shelter care hearing, it is not reasonable to expect lengthy reports and written assessments to be submitted in advance of the hearing. However, federal law requires the court to make a documented,

Submission of Reports to the Court

- ◆ The court should require submission of agency and/or law enforcement reports in the form of an affidavit to be filed with the court along with the petition.
- ◆ The Report should describe all circumstances of removal, including facts that bring the child within the jurisdiction of the CPA, and all efforts made to prevent the need to remove the child from the home.

case specific finding that removal is in the best interest of the child in the first order sanctioning removal of the child (either the endorsement on summons or the shelter care order), and failure to make that finding could result in the child losing eligibility for federal funding.²⁹ In addition Idaho law requires that the petition describe the facts that bring the child within the jurisdiction of the Child Protection Act.³⁰

The recommended best practice is for the petition to be accompanied by a report, in the form of an affidavit, describing all the circumstances of the removal, including the facts that bring the child within the jurisdiction of the CPA, the reasons why removal of the child from the home is in the child's best interest, and the efforts made to prevent the need to remove the child from the home. The report should include information from the IDHW case worker, and from the law enforcement officer if law enforcement was involved in the removal of the child of the circumstances surrounding removal of the child. Advance preparation of this information will ensure that the state is prepared to proceed at the shelter care hearing, provides essential information to the court, the guardian *ad litem*, and the parents, provides the parents with an opportunity to offer a

²⁹ See 45 C.F.R. § 1356.21(c),(d) and discussion of the best interest finding in part C of this chapter.

³⁰ Idaho Code § 16-1605(b)(1) and discussion of the petition in part C of this chapter and in Chapter III.

defense of propose alternatives to shelter care, and may form the basis for an appropriate resolution through stipulation of the parties.

G. The Court's Written Findings of Fact and Conclusions of Law at the Shelter Care Hearing

At the conclusion of the hearing, the court's written findings of fact and conclusions of law should be prepared and distributed in person to the parties. Idaho law requires that a written order be issued within 24 hours of the hearing.³¹ Ideally this should occur at the conclusion of the hearing while the parties are still present. If the court has a shelter care form on a computer, the order and findings can be filled in quickly at the conclusion of the hearing. Handing out an order and findings at the hearing gives the parties an immediate, written record of what has been decided, what they are expected to do prior to the next hearing, and the date and time of the next hearing.

Findings, conclusions, and orders at the shelter care hearing should:

- ◆ Be written in easily understandable language.

If the child is placed outside the home:

- ◆ Include findings that there is reasonable cause to believe the child is within the jurisdiction of the CPA
- ◆ Include case-specific findings as to why it is in the child's best interest to be removed from the home (as required for the child to be eligible for federal funds)
- ◆ Include findings as to reasonable efforts made by the agency to avoid the need for placement (as required for child to be eligible for federal funds)

Whether or not the child is placed outside the home:

- ◆ Schedule further proceedings, and enter any orders necessary to prepare for the next hearing
- ◆ Provide further directions to the parties, such as those governing future parental conduct and any agency services to be provided to the child and/or the parents pending further proceedings

The court's form should include the following findings conclusions and orders:

- a) which parties and counsel were present and which were not; as to those who were not, whether proper notice was given;
- b) whether the order is entered based on the agreement of the parties, and if so, that the agreement was entered into knowingly and voluntarily, and has a reasonable basis in fact;
- c) that a petition has been filed;
- d) whether the child is an Indian child, and if so, whether notice has been given as required by ICWA;
- e) whether there is reasonable cause to believe that the child comes within the jurisdiction of the CPA, and if so, the basis upon which there is reasonable cause to believe the child comes within the jurisdiction of the act (in other words, there is reasonable cause to believe that the child is abandoned, or abused, or neglected, etc.);
- f) whether it is contrary to the child's welfare to remain in the home and in the best interest of the child to be placed in temporary shelter care pending further proceedings, *including case-specific findings as to why removal from the home is in the child's best interest*;
- g) whether the child's safety and welfare can be adequately safeguarded by placing

³¹ Idaho Code § 16-1614(e)(6)

- the child in the sole custody of a parent having joint custody of the child;
- h) whether IDHW made reasonable efforts to prevent the need to remove the child *including case specific findings regarding IDHW's reasonable efforts*, or where emergency removal occurs because of imminent danger to the child, whether the agency's efforts were reasonable under the circumstances;
- i) whether reasonable efforts to prevent or eliminate the need for shelter care could be affected by a protective order safeguarding the child's welfare;
- j) the date and time for the pretrial conference and adjudicatory hearing;
- k) the deadline for filing IDHW and guardian ad litem reports;
- l) an order as to the placement of the child pending further proceedings;
- m) orders as to further efforts to identify, locate and serve essential parties, to determine whether the child is an Indian child, or to give notice in accordance with the Indian Child Welfare Act;
- n) the terms of any protective orders;
- o) an order to the parties and counsel to be present for the pretrial conference and adjudicatory hearing;
- p) an order to IDHW and the guardian ad litem to investigate, prepare and file reports;
- q) orders as to examinations, evaluations, or immediate services for the children pending further proceedings;
- r) orders to IDHW to continue to make reasonable efforts to eliminate the need for placement of the child, including services IDHW is required to provide to the parents and in which the parents are required to participate pending further proceedings;
- s) orders as to visitation, if appropriate;
- t) any other orders necessary to prepare for the next hearing or to ensure the proper progress of the case.

The court's findings of fact, conclusions of law, and order should be written in easily understandable language, that allows the parents and all parties to fully understand the court's order. Along with its legal conclusions, the court should provide a brief explanation of the facts upon which its conclusions are based. The court's entry need not be elaborate, but should document that the court has addressed each of the basic issues presented at a shelter care hearing, and that the court's decision is based upon a reasoned analysis of the evidence presented. The burden of preparing findings can be sharply reduced by incorporating well-prepared reports submitted by the agency or other participants. The entry should also document the court's orders and expectations concerning the parents' and the agency's future conduct. Where possible, an oral record of the court's findings should also be made to provide a basis for correcting defective findings.

H. Conclusion

A timely; careful and complete shelter care hearing can benefit each child and family before the court by:

- ◆ Preventing the unnecessary removal of children from their families by carefully evaluating the danger and exploring possible safe alternatives to removal.

- ◆ Limiting the trauma when a child must be removed by requiring liberal parent-child visits (where safe and appropriate), by identifying appropriate placements, and making sure that relatives and family friends will promptly be contacted and involved.
- ◆ Speeding casework when children must be temporarily removed from their families by requiring early evaluations, examinations and emergency services.
- ◆ Speeding litigation by early completion of critical court business such as service of process, establishment of trial date, and face-to-face meetings between attorneys and clients.
- ◆ Explaining to parents and other family members why the state has intervened and how the judicial process works.
- ◆ Beginning early discussions of settlement possibilities and appropriate services to children and families.

I. Shelter Care Hearing Time Guideline

It is recommended that 60 minutes be allocated for each shelter care hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks	5 Minutes
<ul style="list-style-type: none"> ◆ introduction of parties ◆ advisement of rights ◆ explanation of the proceeding 	
2. Adequacy of Notice and Service of Process Issues	5 Minutes
3. Discussion of Complaint Allegations/Introduction of Evidence	15 Minutes
<ul style="list-style-type: none"> ◆ introduction of the complaint ◆ caseworker testimony ◆ witness testimony ◆ parent testimony 	
4. Discussion of Service Needs/Interim Placement of Child	15 Minutes
<ul style="list-style-type: none"> ◆ parental visitation ◆ sibling visitation ◆ service referral 	
5. Reasonable Efforts Finding	5 Minutes
6. Troubleshooting and Negotiations Between Parties	10 Minutes
<ul style="list-style-type: none"> ◆ time for parents to speak and ask questions ◆ explanation of court procedures to confused parents ◆ identification of putative fathers and investigation of paternity issues ◆ identification of potential relative placements ◆ restraining orders 	
7. Issuance of Orders and Scheduling of Next Hearing	5 Minutes
<ul style="list-style-type: none"> ◆ issue interim custody order (as necessary) ◆ preparation and distribution of additional orders to all parties prior to adjournment 	
◆ Time Allocation	60 Minutes

*Child abuse and neglect cases are frequently resolved without contested hearings by agreement of the parties. Because an outcome reached by agreement is often superior to an outcome reached through litigation, courts should encourage settlement without contested litigation in appropriate cases. Alternatives to contested litigation include settlement conferences conducted by the parties, judicially-supervised settlement conferences, and formal mediation. For more information on alternatives to contested litigation in child abuse, and neglect cases, please see Appendix B.

J. Shelter Care Hearing Checklist

Persons who should always be present at the shelter care hearing:

- ◆ Judge
- ◆ Parents whose rights have not been terminated, including putative fathers
- ◆ Relatives with legal standing or other custodial adults
- ◆ Assigned caseworker
- ◆ Indian Custodian and Child's tribe and tribal attorney
- ◆ County Prosecutor or Deputy Attorney General
- ◆ Attorney for parents (separate attorneys if conflict warrants)
- ◆ Guardian *ad litem*, attorney for GAL and/or attorney for child

- ◆ Court reporter or suitable technology
- ◆ Security personnel
- ◆ Interpreter(s), if applicable

Persons whose presence may also be needed at the shelter care hearing:

- ◆ Age-appropriate children
- ◆ Extended family members
- ◆ Judicial case management staff
- ◆ Law enforcement officers
- ◆ Service providers
- ◆ Adult or juvenile probation or parole officer
- ◆ Other witnesses

Courts can make sure that parties and key witnesses are present by:

- ◆ Requiring quick and diligent notification efforts by the agency;
- ◆ Requiring both oral and written notification in language understandable to each party and witness;
- ◆ Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- ◆ Requiring caseworkers to encourage attendance of parents and other parties.

Key decisions the court should make at the shelter care hearing:

- ◆ Has a CPA petition been filed?
- ◆ Is there reasonable cause to believe that the child is within the jurisdiction of the CAP (abandoned, abused, neglected, homeless, lacks a stable home environment)?
- ◆ Is removal of the child from the home in the child's best interest?
- ◆ Can the child be placed in the sole custody of a parent having joint legal or physical custody?
- ◆ Are services available that would enable the child to remain safely at home, and will the parents commit to participate in the services?
- ◆ Has IDHW made reasonable efforts to avoid protective placement of the child?
- ◆ Are responsible relatives or other responsible adults available?
- ◆ Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- ◆ Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- ◆ Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- ◆ Are orders needed for examinations, evaluations, or immediate services?
- ◆ What are the terms and conditions for parental visitation?
- ◆ What consideration has been given to financial support of the child?

Additional activities at the shelter care hearing:

- ◆ Reviewing notice to missing, parties and relatives;
- ◆ Serving the parties with a copy of the petition;

- ◆ Advising parties of their rights;
- ◆ Reviewing Agreements by the parties
- ◆ The date and time for the next hearing, and any orders needed to prepare for the next hearing
- ◆ Mediation and other forms of alternative dispute resolution

Submission of reports to the court:

- ◆ The court should require submission of agency and/or law enforcement reports in the form of an affidavit to be filed with the court along with the petition
- ◆ Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.

The court's written findings of fact and conclusions of law and order at the shelter care hearing should:

- ◆ Be written in easily understandable language, which allows the parents and all parties to fully understand the court's order.
- ◆ If any of the essential parties are not present, specify whether proper notice was given.
- ◆ Make findings regarding whether the child is an Indian Child and, if so, whether notice has been given as required by ICWA.
- ◆ Specify whether there is reasonable cause to believe that the child comes within the jurisdiction of the CPA, and, if so, the basis upon which the child comes within the jurisdiction of the act (is the child abandoned, abused, neglected, homeless, or does the child lack a stable home environment)
- ◆ Specify whether the child's safety and welfare can be adequately safeguarded by placing the child in the sole custody of a parent having joint legal custody of the child.
- ◆ Specify whether removal or placement of the child could be through protective orders safeguarding the child's welfare. If so, the shelter care order should include the terms of those protective orders.
- ◆ Provide that IDHW continue to make reasonable efforts to avoid the need for placement of the child including services IDHW is required to provide to the parents and in which the parents are required to participate pending further proceedings.
- ◆ Specify examinations, evaluations, or immediate services for the children pending further proceedings
- ◆ Set the date and time of the pretrial conference and adjudicatory hearing, and the deadline for IDHW and GAL reports.
- ◆ Specify further efforts to identify, locate and serve essential parties, to determine whether the child is an Indian Child, or to give notice in accordance with ICWA.

If child is placed outside the home:

- ◆ Describe the placement of the child pending further proceedings;
- ◆ Specify why it is in the best interests of the child to be placed in temporary shelter care pending further proceedings, *including case specific findings as to why removal*

from the home is in the child's best interest (incorporating IDHW and GAL reports as appropriate)

- ◆ Specify whether IDHW made reasonable efforts to prevent the need to remove the child (including a brief description of what services, if any, were provided and why placement is necessary), or whether reasonable efforts could not be provided due to immediate danger to the child *including case specific finding regarding reasonable efforts made by IDHW (incorporating IDHW and GAL reports as appropriate)*.
- ◆ Specify the terms of visitation.